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Re: Health-Pak, Inc.
Case No. 00-62902
Motion to Sell Interest in Personal Property

LETTER DECISION and ORDER

Dear Counselors:

On August 31, 2004, the above referenced motion appeared on the Court's calendar held at Utica, N.Y. Following the call of the calendar, the Court requested an in-chambers conference with counsel to the Trustee, counsel to the sole offeror, EAL Holdings, LLC, and the Assistant U.S. Trustee. Debtor's counsel was not present at the motion term. During the chambers conference, the Court advised counsel that it intended to *sua sponte* recuse itself in the case in accordance with Canon Three of the Code of Conduct for United States Judges.

Following the chambers conference, the Court announced its intent to recuse itself, on the record in open Court, and advised all parties-in-interest then present that it would transfer the case, including the within motion, to the Honorable Robert E. Littlefield, Jr., United States Bankruptcy Judge for the Northern District of New York, sitting at Albany, N.Y.

This Court's decision to *sua sponte* recuse itself results from the Court being made aware of two e-mail transmissions attributable to one Anthony Liberatore, a former officer of the Debtor. The Court was provided with the e-mail transmissions by the U.S. Trustee on or about July 9, 2004. The first of the e-mail transmissions was dated August 22, 2002, and was sent from ["LETHLIB@aol.com"](mailto:LETHLIB@aol.com) to ["drca@le-th.com"](mailto:drca@le-th.com), while the second transmission was dated October 23, 2003, and was sent by the same author to ["drca@eircom.net"](mailto:drca@eircom.net). Both transmissions are signed "Regards, Tony" and both transmissions express the view that "Tony" has a special relationship with the Court, and as a result of that relationship, "he [the Judge] will do anything I ask."

The Court believes that it previously acknowledged, on the record, in the course of the Chapter 11 case prior to conversion to Chapter 7, that it was familiar with Anthony Liberatore and other members of his immediate family, but that it did not believe that that acquaintance, which was purely social in nature and some years removed from the filing of the case, mandated the Court's recusal. It is now apparent to the Court, following the July 9th revelation by the U.S. Trustee, that Anthony Liberatore believed that he could utilize his acquaintance with the Court in order to gain some perceived advantage for the Debtor in the course of the Chapter 11 case, and presumably, in the now converted Chapter 7 case.

This Court is of the opinion that in light of the revelation of the e-mail transmissions referred to above it cannot any longer fairly and impartially preside over any further proceedings in the case.

Now, therefore, in consideration of the foregoing, it is

ORDERED, that in accordance with the Local Bankruptcy Rules for the Northern District of New York, the pending motion referenced above and any and all future proceedings filed or undertaken in this bankruptcy case, as well as the case itself, shall be hereby transferred to the Honorable Robert E. Littlefield, Jr., United States Bankruptcy Judge for the Northern District of New York at Albany, N.Y.

Dated at Utica, New York

this 1st day of September 2004

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge

cc: Hon. Robert E. Littlefield, Jr.
U.S. Bankruptcy Judge
Thomas Hughes, Esq.